



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 10, 1997

The Honorable Eddie Lucio, Jr.
Chair, Intergovernmental Relations
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Letter Opinion No. 97-034

Re: Whether a municipal employee may serve as
a member of the city commission (ID# 39468)

Dear Senator Lucio:

You have requested our opinion regarding whether a municipal employee may serve simultaneously as an elected commissioner of the same municipality.

The individual in question is a member of the fire department of the City of McAllen, and also serves as an assistant fire marshal. You indicate that, as a city commissioner, he would have direct supervisory authority over the city manager, who in turn is the direct supervisor of the fire chief. Thus, a city commissioner in McAllen is in the direct chain of supervision over a member of the fire department.

This office has frequently held that the "self-employment" portion of the common-law doctrine of incompatibility prohibits "an individual from holding an office and at the same time holding an employment that is subordinate to the office." Letter Opinion No. 94-070 (1994); Attorney General Opinion DM-55 (1991). As long ago as 1975, the attorney general said that a teacher is barred from serving as a member of the board of trustees of the district in which she is employed. *See* Attorney General Letter Advisory No. 114 (1975). Thus, it is clear that an employee of a municipal fire department may not simultaneously serve as a city commissioner of the same municipality.¹

You also ask whether the individual in question may become a candidate for the position of city commissioner without resigning his employment with the fire department. Two constitutional provisions bar certain elected local officers from remaining in office after announcing their candidacy for a second office with more than one year remaining in their original term. *See* Tex. Const. arts. XI; § 11, XVI, § 65. However, these provisions apply only to elected officers; they have no application to employees. Consequently, there is no impediment to the individual of whom you inquire becoming a candidate for city commissioner. Should he be elected and take the oath of office,

¹Since we conclude that the situation you describe is proscribed by virtue of common-law incompatibility, we need not determine whether an "assistant fire marshal" holds an "office" for purposes of article XVI, section 40, of the Texas Constitution. *See* Letter Opinion No. 93-027 (1993); Attorney General Opinion DM-212 (1993).

however, he will automatically vacate his municipal employment. *See Centeno v. Inselmann*, 519 S.W.2d 889 (Tex. Civ. App.—San Antonio 1975, no writ).

S U M M A R Y

An employee of a municipal fire department may not simultaneously serve as a city commissioner in the same municipality, but he may become a candidate for the position without resigning his municipal employment.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Rick Gilpin".

Rick Gilpin
Deputy Chief
Opinion Committee